

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 558 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARFARAZKHAN SHAHIDKHAN @ SA KHANJANE ALAM PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.SJ DAVE, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/09/97

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the order of detention dated 16th September 1996 passed by Respondent No.1 in exercise of the powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act, 1985"), with a view to prevent the petitioner from carrying on their activities prejudicial

to the maintenance of public order.

2. It appears from the grounds of detention that the petitioner belongs to a gang of persons named therein who have also been detained under the PASA Act, 1985. The said gang has been formed with an idea of committing major theft and they actually committed such thefts, as a result of which three crimes of theft and house breaking (under Sections 457 and 380 I.P.C.) and two crimes under the provisions of the Arms Act have been registered against the said named accused persons. The investigation papers coupled with the confession statement of the detenu also indicates that the detenu and his companion had made a plan to commit major theft in the State. However, that could be prevented because of some effective measures taken by the police. The detenu was found in possession of fire arms. It further appears from the statement of the witnesses that the detenu is a head strong person having created atmosphere of fear and his activities are alleged to have potentiality of resulting into breach of public order.

3. The learned Counsel appearing for the petitioner firstly submits that because of some stray incident it cannot be said that the petitioner had indulged in to an activity which may affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. 1268. In reply reference has been made to a decision of this Court rendered on 10.12.1996 (Coram : N.N.Mathur, J.) in Special Civil Application No.9544 of 1996 in the case of Anjuman Begum w/o Taslim Ahmedidris Ahmed V/s. State of Gujarat and others. In respect of the co-detenu this Court observed as under :

"I have carefully gone through the judgment of the Apex Court in above referred to decisions of the Apex Court. The said Judgment is not of any help to the petitioner. There is overwhelming material on record to show that the petitioner is a member of a gang which indulge in theft in the State of Uttar Pradesh and other States including the State of Gujarat. His activities has created an atmosphere of fear and has also potentiality of resulting into breach of public order. "

In my opinion, this Court having examined the papers concerning the activities of the detenues including the present petitioner and having reached the conclusion that the activities of the petitioner in fact

created atmosphere of fear and had also potentiality of resulting into breach of public order, there is no reason for a different view being taken in the present matter. Hence, the first ground of challenge against the impugned order of detention fails.

4. It is next submitted on behalf of the petitioner that one of the offences which have been referred to in the ground of detention is of 1993 and, therefore, that is a stale ground relied upon. This submission cannot be accepted inasmuch as there are number of offences which have been referred to in the grounds of detention and the relevance of the offence of 1993 is for the purpose of showing the continuous activity of the petitioner. Hence, by merely showing one of the offences to be of 1993 it cannot be said that the impugned order of detention is vitiated on account of placing reliance upon an old offence.

5. It has then been alleged that the detaining authority has not rendered subjective satisfaction with regard to privilege under Section 9(2) of the PASA Act. In reply learned A.G.P. has read the ground of detention which themselves make it clear that the detaining authority has rendered his subjective satisfaction on this aspect of the matter also. Besides, in Para : 11 and 12 of the Affidavit in Reply the detaining Authority has also made it clear that he himself verified the facts concerning the privilege under Section 9(2) of the PASA Act. The result is that this ground of challenge against the impugned order of detention must also fail.

6. It has then been submitted by Ms.Kachhavah, learned Advocate appearing for the detenu that the Detaining Authority was required to forthwith report the facts regarding the impugned detention as also the ground on which the impugned order of detention has been passed to the State Government and the detaining Authority has failed to comply with this requirement under Section 3(3) of the PASA Act. The detaining Authority has filed Affidavit in Reply positively stating therein that the facts with regard to detention as well as the grounds of detention have been forthwith reported to the State Government. The argument is that this is a vague reply. The argument that this is a vague reply on the part of the detaining authority cannot be accepted inasmuch as saying that the matter has been forthwith reported cannot be said to be vague. Hence the submission in this respect cannot be accepted.

7. It has then been submitted that some documents

were not supplied as referred to in Representation dated 9.6.1997. Reference has been made to some cases registered in State of U.P. In fact on a reference to the papers it does appear that no such papers were with the detaining Authority, but the facts with regard to the offences registered in the State of U.P. appear in the statement of the detenu and the copy of such statement has been supplied. Therefore, it cannot be said that the material on which reliance has been placed has not been supplied to the detenu. It is not the case of the petitioner nor can it be said that the detaining Authority has been in possession of any such documents so that the copies could be supplied to the petitioner as per the requisition made in representation dated 7.6.1997. Hence, this ground of challenge also must fail.

8. It has then been submitted on behalf of the petitioner that there is delay in considering the representation dated 9.6.1997. It appears from the Affidavit in Reply as well as from the papers the representation was received on 10.6.1997 and was transmitted to the concerned branch which received it on 11.6.1997 and that branch in turn transmitted the same to the Addl. Chief Secretary who received it on 12.6.1997 and rejected the same on the same day. Hence, in my opinion, there is no delay in deciding the representation by the concerned Authority.

9. Then there is a reference to the representation dated 15.1.1997 having been decided at a belated point of time. The Affidavit in Reply indicates that such representation was received on 16.1.1997 and the same was considered and rejected on 17.1.1997 and the reply in that connection was also sent to the detenu immediately. Another such representation was received by the State Government on 21.1.1997 and it was submitted to the Deputy Secretary on the same day who cleared it and sent it to the Addl. Chief Secretary on 22.1.1997, who considered and rejected the representation on 25.1.1997 and communication to that effect was made on 27.1.1997 as 26.1.1997 was the public holiday. The delay with regard to 23.1.1997 and 24.1.1997 has been explained by saying that the Addl. Chief Secretary (Home) was on official tour. In my opinion once when the same representation was dealt with and decided on 17.1.1997 there was no fun in deciding the same representation once again routed through some other authority. In any event even that representation has also been decided and the delay of 2 days, viz. 23.1.1997 and 24.1.1997 has been explained satisfactorily. Hence, it cannot be said that there is

delay in deciding the representation dated 15.1.1997.

10. I have gone through the matter at length and I find that there is no substance in this petition.

11. No other ground of challenge against the impugned order of detention or the continued detention of the petitioner has been pressed into service.

12. Following order is, therefore, passed :

This petition is dismissed. Rule is discharged.

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